

No. 16837

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**UNITED STATES OF AMERICA  
and  
BANGLADESH**

**Loan Agreement for fertilizer storage (with annex and related letter). Signed at Dacca on 8 December 1976**

*Authentic text: English.*

*Registered by the United States of America on 10 July 1978.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
BANGLADESH**

**Accord de prêt relatif à l'entreposage d'engrais (avec annexe et lettre connexe). Signé à Dacca le 8 décembre 1976**

*Texte authentique : anglais.*

*Enregistré par les États-Unis d'Amérique le 10 juillet 1978.*

# LOAN AGREEMENT<sup>1</sup> BETWEEN THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE UNITED STATES OF AMERICA FOR FERTILIZER STORAGE

Dated: December 8, 1976

A.I.D. Loan No. 388-T-0030

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<sup>1</sup> Came into force on 8 December 1976 by signature.

<i>Article and Section</i>	<i>Title</i>	<i>Article and Section</i>	<i>Title</i>
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LOAN AGREEMENT dated the eighth day of December, 1976, between the GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH ("Government") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

### *Article I. THE LOAN*

*Section 1.01. THE LOAN.* A.I.D. hereby agrees to lend to the Government pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed five million two hundred and fifty thousand United States dollars (\$5,250,000) ("Loan") to assist the Government in carrying out the Project referred to in Section 1.02 ("Project"). The Loan shall be used exclusively to finance the United States dollar and a portion of the local currency costs of goods and services required for the Project. The aggregate amount of disbursement under the Loan is hereinafter referred to as "Principal".

*Section 1.02. THE PROJECT.* The Project shall consist of construction of up to 50,000 metric tons (MT) of fertilizer warehouse capacity and related housing and office space and for maintenance of such construction and other existing fertilizer warehouse facilities. The implementing agency for the Project is the Bangladesh Agricultural Development Corporation ("BADC"), particularly the BADC Construction Division.

The Project is more fully described in Annex A, attached hereto, which may be modified in writing by agreement of the parties hereto. The goods and services to be financed under the Loan shall be listed in the implementation letters referred to in Section 9.03 "Implementation Letters".

### *Article II. LOAN TERMS*

*Section 2.01. INTEREST.* The Government shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement as such date is defined in Section 7.03, and shall be computed on the basis of a 365-day year. Interest shall be payable semi-annually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

*Section 2.02. REPAYMENT.* The Government shall repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with

Section 2.01. A.I.D. shall provide the Government with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

*Section 2.03. APPLICATION, CURRENCY AND PLACE OF PAYMENT.* All payments of interest and Principal hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C., U.S.A., and shall be deemed made when received by the Office of the Controller.

*Section 2.04. PREPAYMENT.* Upon payment of all interest and refunds then due, the Government may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

*Section 2.05. RENEGOTIATION OF THE TERMS OF THE LOAN.* The Government agrees to negotiate with A.I.D. at such time or times as A.I.D. may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of Bangladesh (taking into account the relative capital requirements of Bangladesh).

### *Article III. CONDITIONS PRECEDENT TO DISBURSEMENT*

*Section 3.01. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT.* Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, the Government shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion of the Ministry of Law of Bangladesh that this Agreement has been duly authorized or ratified by, and executed on behalf of the Government, and that it constitutes a valid and legally binding obligation of the Government in accordance with all of its terms;
- (b) Evidence of the authority of the person or persons who will act as the representative or representatives of the Government as specified in Section 9.02 and a specimen signature of such person or persons certified as to its authenticity by either the person rendering the legal opinion required by subsection (a) above or the person who has executed this Agreement for the Government;
- (c) A copy of an executed contract between BADDC and a firm ("Consultant") satisfactory to A.I.D. to perform engineering and other consultant services for the Project; and
- (d) Such other documents regarding the Project as A.I.D. may reasonably request.

*Section 3.02. CONDITIONS PRECEDENT TO DISBURSEMENT FOR EACH PHASE OF THE PROJECT.* Prior to each disbursement for each phase of the Project, the Government shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) Documentation for each site for which reimbursement is to be made, which documentation shall have been submitted prior to construction at such site,

consisting of (a) a listing of the final site selection and determination of warehouse size for each such site, (b) evidence of acquisition of land or other rights required for the use of each such site in accordance with the purpose of the Project, and (c) copies of designs, specifications and cost estimates for construction on such site and standard construction contract all as approved by the Consultant;

- (b) Certification by the Consultant of completion of construction at each such site in accordance with the specifications agreed upon by A.I.D. and BADC, and certification of completion costs;
- (c) Evidence of adequate plans, budget and staff for the operation and maintenance of facilities constructed under the Project.

*Section 3.03.* CONDITIONS PRECEDENT FOR SECOND PHASE CONSTRUCTION IN ADDITION TO CONDITIONS ABOVE. Completion of joint A.I.D.-Government evaluation of the first phase of construction and implementation of agreed findings.

*Section 3.04.* TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT. (a) If all of the conditions specified in Section 3.01 shall not have been met by February 7, 1977, or such later date as A.I.D. may agree to in writing, A.I.D. may, at its option, terminate this Agreement by giving written notice to the Government.

(b) If all conditions to the first phase of construction specified in Section 3.02 have not been met by September 7, 1977, and if all conditions to the second phase of construction specified in Sections 3.02 and 3.03 have not been met by September 7, 1978, or later date, in each case, as A.I.D. may agree to in writing, A.I.D., at its option, may cancel the then undisbursed balance of the amount of the Loan and may terminate this Agreement by written notice to the Government. In the event of such termination, the Government will repay immediately the Principal then outstanding and any accrued interest; on receipt of such payments in full, this Agreement and all obligations of the parties hereunder will terminate.

*Section 3.05.* NOTIFICATION OF MEETING CONDITIONS PRECEDENT. A.I.D. shall in each such case notify the Government upon determination by A.I.D. that the conditions precedent to initial disbursement, to disbursement for the first phase and to disbursement for the second phase as are specified above have been met.

#### Article IV. SPECIAL COVENANT

The Government will join, or cause BADC to join, in evaluation by A.I.D. of each phase of construction under the Project and of the overall results of the Project upon crop production, fertilizer use and small farmer incomes; and agrees that the results of these evaluations as appropriate and as agreed by A.I.D. and the Government or BADC for the Government will be accepted by the Government as conditions to disbursement respectively under any immediately following A.I.D. loans to the Government for construction of fertilizer storage facilities and for import of fertilizer or fertilizer raw materials.

#### Article V. GENERAL COVENANTS AND WARRANTIES

*Section 5.01.* EXECUTION OF THE PROJECT. The Government will cause BADC to carry out the Project with diligence and efficiency, and in accordance

with sound administrative, financial, engineering and construction practices, and will not take nor permit any action which would interfere with the effective implementation of the Project.

*Section 5.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY THE GOVERNMENT.* The Government shall provide promptly as needed all funds, in addition to the Loan, and all other resources required for the punctual and effective carrying out, maintenance, repair and operation of the Project. The Government agrees that its contribution to the Project will not be less than twenty-five percent (25%) of the total Project cost.

*Section 5.03. PROJECT MANAGEMENT.* The Government will cause BADC to operate the Project in such manner as to ensure the continuing and successful achievement of the Project purpose.

*Section 5.04. OBLIGATIONS UNDER THE ASHUGANJ FERTILIZER PROJECT.* The Government will implement those obligations of the Government under the Loan Agreement between the Government and A.I.D. for the Ashuganj Fertilizer Project which affect or have relation to the implementation of this Project.

*Section 5.05. CONSULTATION WITH RESPECT TO INLAND TRANSPORT.* The Government will consult with A.I.D. from time to time at the request of either with respect to basic inland transport capability and will take action as appropriate to increase the efficiency of such transport as it affects the implementation of the Project.

*Section 5.06. CONTINUING CONSULTATION.* The Government will consult with A.I.D. from time to time at the request of either, with respect to the obligations accepted by the Government under the Project and any question related thereto.

*Section 5.07. TAXATION.* This Agreement, the Loan, and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest shall be paid without deduction for and be free from, any taxation or fees imposed under the laws in effect within Bangladesh. To the extent that (a) any non-Bangladesh contractor, including any consulting firm, any non-Bangladesh personnel of such contractor financed hereunder, and any property or transactions relating to such contracts and (b) any procurement transaction financed hereunder are not exempt from identifiable taxes, tariffs, duties, and other levies imposed under laws in effect in Bangladesh, the Government shall, as and to the extent prescribed in and pursuant to Implementation Letters, pay or reimburse the same under Section 5.02 of this Agreement with funds other than those provided under the Loan.

*Section 5.08. UTILIZATION OF GOODS AND SERVICES.* (a) Goods and services financed under the Loan shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing. Upon completion of the Project, or at such other time as goods financed under the Loan can no longer usefully be employed for the Project, the Government may use or dispose of such goods in such manner as A.I.D. may agree to in writing prior to such use or disposition.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Loan shall be used to promote or assist any foreign aid project

or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

*Section 5.09. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES.* The Government represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and that it has disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of its obligations under this Agreement. The Government shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Government's obligations under this Agreement.

*Section 5.10. COMMISSIONS, FEES AND OTHER PAYMENTS.* (a) The Government warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to the Government's full-time officers and employees or as compensation for bona fide professional, technical, or comparable services. The Government shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical, or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(b) The Government warrants and covenants that no payments have been or will be received by the Government, or any officials of the Government, in connection with the procurement of goods and services financed hereunder, except fees, taxes or similar payments legally established in Bangladesh.

*Section 5.11. MAINTENANCE AND AUDIT OF RECORDS.* The Government shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) The receipt and use made of goods and services acquired with funds disbursed pursuant to this Agreement;
- (b) The nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (c) The basis of the award of contracts and orders to successful bidders; and
- (d) The progress of the Project.

Such books and records shall be annually audited, in accordance with sound auditing standards, by the Auditor General of Bangladesh or an auditor acceptable to A.I.D. for such period and at such intervals as may be mutually agreed, and shall be maintained for five years after the date of the last disbursement by A.I.D. or until all sums due A.I.D. under this Agreement have been paid, whichever date shall first occur.

*Section 5.12. REPORTS.* The Government shall furnish to A.I.D. such information and reports relating to the Loan and to the Project as A.I.D. may request.

*Section 5.13. INSPECTIONS.* The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect the Project, the utilization of all goods and services financed under the Loan, and the Government's books, records and other documents relating to the Project and the Loan. The Government shall cooperate with A.I.D. to facilitate such inspections.

#### Article VI. PROCUREMENT

*Section 6.01. PROCUREMENT FROM SELECTED FREE WORLD COUNTRIES.* Except as A.I.D. may otherwise agree in writing, and except as provided in subsection 6.09 (c) with respect to marine insurance, disbursements made pursuant to Section 7.01 (a) shall be used exclusively to finance the procurement for the Project of goods and services having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such goods and services. Goods and services procured pursuant to this Section shall be referred to as "Selected Free World Goods" and "Selected Free World Services" respectively. All ocean shipping financed under the Loan shall have both its source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

*Section 6.02. PROCUREMENT FROM BANGLADESH.* Disbursements made pursuant to Section 7.01 (b) shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in Bangladesh, except as A.I.D. may otherwise agree in writing.

*Section 6.03. ELIGIBILITY DATE.* Except as A.I.D. may otherwise agree in writing, no goods and services may be financed under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement.

*Section 6.04. GOODS AND SERVICES NOT FINANCED UNDER LOAN.* Goods and services procured for the Project, but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

*Section 6.05. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS.* The definitions applicable to the eligibility requirements of Sections 6.01, 6.02, and 6.04 will be set forth in detail in Implementation Letters.

*Section 6.06. PLANS, SPECIFICATIONS AND CONTRACTS.* (a) Except as A.I.D. may otherwise agree in writing, the Government shall furnish to A.I.D., promptly upon preparation, all determinations of warehouse site and size selection, plans, specifications, construction schedules, cost estimates, standard bid documents and contracts relating to the Project, and any modifications therein, whether or not the goods and services to which they relate are financed under the Loan.

(b) Except as A.I.D. may otherwise agree in writing, all of the determinations of warehouse site and size selection, plans, specifications,



construction schedules, cost estimates, standard bid documents and contracts, and any modifications therein, furnished pursuant to subsection (a) above relating to goods and services financed under the Loan shall be approved in writing by A.I.D. prior to their becoming effective.

(c) All plans, specifications, and other documents relating to goods and services financed under the Loan shall be in terms of United States standards and measurements, except as A.I.D. may otherwise agree in writing.

(d) The following contracts financed under the Loan shall be approved by A.I.D. in writing prior to their execution:

- (i) Contracts for engineering and other consultant services,
- (ii) Contracts for such other services as A.I.D. may specify, and
- (iii) Contracts for such equipment and materials as A.I.D. may specify.

In the case of any of the above contracts for services, A.I.D. shall also approve in writing such contractors and contractor personnel as A.I.D. may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be approved by A.I.D. in writing prior to their becoming effective.

(e) Awards of contracts for site preparation and construction services financed under the Loan, including the cost estimates which are part of said contracts, shall also be approved by A.I.D. in writing prior to their becoming effective.

(f) Consulting firms used by the Government for the Project but not financed under the Loan, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Government for the Project but not financed under the Loan, shall be acceptable to A.I.D.

*Section 6.07. REASONABLE PRICE.* No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan, as more fully described in Implementation Letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

*Section 6.08. EMPLOYMENT OF NON-SELECTED FREE WORLD NATIONALS UNDER CONSTRUCTION CONTRACTS.* The employment of personnel to perform services under any construction contract financed under the Loan shall be subject to certain requirements with respect to nationals of countries other than Bangladesh and countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time the construction contract is entered into. These requirements are prescribed in Implementation Letters.

*Section 6.09. SHIPPING AND INSURANCE.* (a) Selected Free World Goods financed under the Loan shall be transported to Bangladesh only on flag carriers of a country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment. No such goods may be transported on any ocean vessel or aircraft (i) which A.I.D., in a notice to the Government, has designated as ineligible to carry A.I.D.-financed goods or (ii) which has been chartered for the

carriage of A.I.D.-financed goods unless such carrier has been approved by A.I.D.

b) Unless A.I.D. shall determine that privately owned United States—flag commercial vessels are not available at fair and reasonable rates for such vessels, (i) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed under the Loan which may be transported on ocean vessels shall be transported on privately owned United States—flag commercial vessels, and (ii) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan and transported to Bangladesh on dry cargo liners shall be paid to or for the benefit of privately owned United States—flag commercial vessels. Compliance with the requirements of (i) and (ii) above must be achieved with respect to both cargo transported from U.S. ports and cargo transported from non-U.S. ports, computed separately.

(c) Marine insurance on Selected Free World Goods may be financed under the Loan with disbursements made pursuant to Section 7.01, provided (i) such insurance is placed at the lowest available competitive rate in Bangladesh or in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Government, by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to Bangladesh financed under the Loan shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(d) The Government shall insure, or cause to be insured, all Selected Free World Goods financed under the Loan against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice and shall insure the full value of the goods. Any indemnification received by the Government under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse the Government for the replacement or repair of such goods. Any such replacements shall have their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such replacements, and shall be otherwise subject to the provisions of this Agreement. To the extent that the Government does not procure marine insurance, the Government shall provide the necessary resources, acceptable to A.I.D., to permit replacement or repair of any lost or damaged goods procured under his Agreement, to the extent that such replacement or repair of lost or damaged goods is normally recoverable under marine insurance.

*Section 6.10. NOTIFICATION TO POTENTIAL SUPPLIERS.* In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Government shall furnish to A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

*Section 6.11. UNITED STATES GOVERNMENT-OWNED EXCESS PROPERTY.* The Government shall utilize, with respect to goods financed under the

Loan to which the Government takes title at the time of procurement, such reconditioned United States Government—owned Excess Property as may be consistent with the requirements of the Project and as may be available within a reasonable period of time. The Government shall seek assistance from A.I.D. and A.I.D. will assist the Government in ascertaining the availability of and in obtaining such Excess Property. A.I.D. will make arrangements for any necessary inspection of such property by the Government or its representative. The costs of inspection and of acquisition, and all charges incident to the transfer to the Government of such Excess Property, may be financed under the Loan. Prior to the procurement of any goods, other than Excess Property financed under the Loan and after having sought such A.I.D. assistance, the Government shall indicate A.I.D. in writing, on the basis of information then available to it, either that such goods cannot be made available from reconditioned United States Government—owned Excess Property on a timely basis or that the goods that can be made available are not technically suitable for use in the Project.

*Section 6.12. INFORMATION AND MARKING.* The Government shall give publicity to the Loan and the Project as a program of United States aid, identify the Project site, and mark goods financed under the Loan, as prescribed in Implementation Letters.

#### *Article VII. DISBURSEMENTS*

*Section 7.01. DISBURSEMENTS FOR PROJECT.* (a) *Reimbursement for United States Dollar Costs.* Upon satisfaction of the conditions precedent each to initial disbursement, to disbursement for the first phase of construction and to disbursement for the second phase of construction, A.I.D. will through Letters of Commitment or otherwise from the proceeds of the Loan reimburse the Government for or pay the United States dollar costs of goods and services procured for the Project upon receipt of requests for such reimbursement or payment from the Government upon such schedule and accompanied by such supporting documentation as A.I.D. may prescribe in Implementation Letters. Banking charges incurred by the Government in connection with Letters of Credit and such other banking charges as A.I.D. and the Government may agree may be financed under the Loan.

(b) *Reimbursement for Local Currency Costs.* Upon satisfaction of conditions precedent each to initial disbursement, to disbursement for the first phase of construction and to disbursement for the second phase of construction, the Government may request A.I.D. to reimburse the local currency costs of goods and services procured for the Project by submitting requests to A.I.D. upon such schedule and accompanied by such supporting documentation as A.I.D. may prescribe in Implementation Letters. Payment for local currency costs shall be in United States dollars and shall be determined by the highest lawful selling rate for United States dollars on the date on which reimbursement is made.

(c) *Maximum Amount Available for Disbursement.* In no event shall the amount available for disbursement for foreign exchange and local currency costs exceed the amount of the Loan established in Section 1.01.

*Section 7.02. OTHER FORMS OF DISBURSEMENT.* Disbursement of the Loan may also be made through such other means as the Government and A.I.D. may agree in writing.

*Section 7.03. DATE OF DISBURSEMENT.* Disbursement by A.I.D. will be deemed to occur (a) in the case of disbursement pursuant to Section 7.01 (a), on the date on which A.I.D. makes a disbursement to the Government, its designee, or to the Consultant, or to a banking institution pursuant to a Letter of Commitment or Credit; and (b) in the case of disbursement pursuant to Section 7.01 (b), on the date on which A.I.D. makes a disbursement to the Government or its designee.

*Section 7.04. TERMINAL DATE FOR DISBURSEMENT.* Except as A.I.D. may otherwise agree in writing, no Letter of Commitment or commitment documents which may be called for by another form of disbursement under Section 7.02, or amendment thereto, shall be issued in response to a request received by A.I.D. after December 7, 1978, and no disbursement or reimbursement shall be made against documentation received by A.I.D. or any bank described in Section 7.01 after March 7, 1979. A.I.D., at its option, may at any time or times after June 7, 1979, reduce the Loan by all or any part thereof for which documentation was not received by such date.

#### *Article VIII. CANCELLATION AND SUSPENSION*

*Section 8.01. CANCELLATION BY THE GOVERNMENT.* The Government may, with the prior written consent of A.I.D., by written notice to A.I.D., cancel any part of the Loan (i) which, prior to the giving of such notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

*Section 8.02. EVENTS OF DEFAULT; ACCELERATION.* If any one or more of the following events ("Events of Default") shall occur:

- (a) The Government shall have failed to pay when due any interest or installment of Principal required under the Agreement;
- (b) The Government shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency;
- (c) The Government shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Government or any of its agencies and A.I.D., or any of its predecessor agencies,

then A.I.D. may, as its option, give to the Government notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within such sixty (60) days:

- (i) Such unpaid Principal and accrued interest shall be due and payable immediately; and
- (ii) The amount of any further disbursement made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

*Section 8.03. SUSPENSION OF DISBURSEMENT.* In the event that at any time:

- (a) An Event of Default has occurred; or
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purposes of the Loan will be attained or that the Government will be able to perform its obligations under this Agreement; or
- (c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or
- (d) The Government shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Government or any of its agencies and the Government of the United States or any of its agencies,

then A.I.D. may, at its option:

- (i) Suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Government promptly thereafter;
- (ii) Decline to make disbursements other than under outstanding commitment documents;
- (iii) Decline to issue additional commitment documents;
- (iv) At A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. if the goods are from a source outside Bangladesh, are in a deliverable state and have not been offloaded in ports of entry of Bangladesh. Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

*Section 8.04. CANCELLATION BY A.I.D.* Following any suspension of disbursement pursuant to Section 8.03, if the cause or causes for such suspension of disbursement shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

*Section 8.05. CONTINUED EFFECTIVENESS OF AGREEMENT.* Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

*Section 8.06. REFUNDS.* (a) the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Government to refund such amount in United States dollars to A.I.D. within thirty days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity, and the amount of

the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, A.I.D. shall permit the Government to reuse such refunds if the terminal date for disbursement under Section 7.04 has not passed and there is sufficient time for the Government to utilize the funds before such terminal date. In the event that the terminal date for disbursement has passed or there is not sufficient time to utilize the funds before the terminal date, the refunds shall be applied to the installments of Principal in the inverse order of their maturity.

*Section 8.07. EXPENSES OF COLLECTION.* All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 8.02 may be charged to the Government and reimbursed to A.I.D. in such manner as A.I.D. may specify.

*Section 8.08. NON-WAIVER OF REMEDIES.* No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any of such rights, powers, or remedies.

#### *Article IX. MISCELLANEOUS*

*Section 9.01. COMMUNICATIONS.* Any notice, request, document, or other communication given, made, or sent by the Government or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram and shall be deemed to have been duly given, made, or sent to the party to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable, or radiogram at the following addresses:

To the Government:

Mail Address: Secretary or Joint Secretary  
External Resources Division  
Ministry of Planning  
Government of Bangladesh  
Sher-e-Bangla Nagar  
Dacca, Bangladesh

Cable Address: PLANCOM

To A.I.D.:

Mail Address: USAID Mission/Bangladesh  
American Embassy  
Adamjee Court  
P.O. Box 323, Ramna  
Dacca-2, Bangladesh

Cable Address: USAID/Bangladesh

Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

*Section 9.02. REPRESENTATIVES.* For all purposes relative to this Agreement, the Government will be represented by the individuals holding or acting in the office of Secretary and Joint Secretary, External Resources Division, Ministry of Planning, and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID Mission/Bangladesh. Such individuals shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, the Government shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Government designated pursuant to this Section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

*Section 9.03. IMPLEMENTATION LETTERS.* A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the Implementation of this Agreement.

*Section 9.04. PROMISSORY NOTES.* At such time or times as A.I.D. may request, the Government shall issue promissory notes or such other evidences of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably request, provided that the terms of such promissory notes or other evidences of indebtedness are not inconsistent with the terms and conditions contained in the Loan Agreement.

*Section 9.05. TERMINATION UPON FULL PAYMENT.* Upon payment in full of the principal and of any accrued interest, this Agreement and all obligations of the Government and A.I.D. under this Loan Agreement shall terminate.

IN WITNESS WHEREOF, the Government and the United States of America, each acting through its respective duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

Government  
of the People's Republic  
of Bangladesh:

By: [Signed]  
Name: EKRAM HOSSAIN  
Title: Joint Secretary  
External Resources Division  
Ministry of Planning

Government  
of the United States of America:

By: [Signed]  
Name: DAVID M. WILSON  
Title: Acting Director  
USAID Mission/Bangladesh

## ANNEX A

### BANGLADESH FERTILIZER STORAGE PROJECT

#### PROJECT DESCRIPTION

The Government of the People's Republic of Bangladesh ("Government") has recently approved a program to add 69,600 MT of fertilizer storage capacity within three years. In addition, another 282,800 MT is planned to be proposed for construction under the Second

Five Year Plan. This Project is an immediate response to the present need and will finance up to 50,000 MT of warehouses, and ancillary buildings for housing and office space, and related consultant engineering services. The construction of these facilities is planned to be completed in approximately two equal phases of one year each. The Project also includes maintenance of the facilities constructed under the Project as well as of other existing fertilizer warehouse facilities. The broader purpose of the Project is an increase in rural incomes, specifically for small farmers, through providing improved access to fertilizer, an essential component to increase of crop production and income.

The Project, therefore, provides for construction of fertilizer warehouses and ancillary buildings at immediately critical points in the fertilizer distribution system, clearing principal points where movement of fertilizer is obstructed, and at Thana level where existing or projected demand or logistics constraints have identified the need. The Project also provides for maintenance of the facilities constructed under the Project as well as of other existing fertilizer warehouse facilities. The Government implementing agency for the Project is the Bangladesh Agricultural Development Corporation ("BADC"), particularly the BADC Construction Division.

The Loan funds provided under the Project will finance on a fixed-amount-reimbursement (FAR) basis 75 percent of the previously agreed costs of construction upon completion of construction according to previously agreed specifications. The Government will advance all local currency required for such construction and will absorb the non-reimbursed 25 percent, which in addition to other local costs, including costs of maintenance above, accepted by the Government, will constitute 25 percent of total Project costs met by the Government. Consultant engineering services will also be provided under the Project, all costs of which will be financed under the A.I.D. Loan.

The Government will expend in the United States from its own foreign exchange resources an amount equivalent to the United States dollars reimbursed to the Government or expended by A.I.D. from this Loan for local currency costs of the Project. Such expenditures will not include purchases from the United States which are financed with A.I.D. funds under this or any other A.I.D. Project.

#### RELATED LETTER

UNITED STATES OF AMERICA  
AGENCY FOR INTERNATIONAL DEVELOPMENT  
DACCA, BANGLADESH

December 8, 1976

Dear Dr. Hossain:

I refer to the Loan Agreement between the Government of the People's Republic of Bangladesh (hereinafter called Government) and the United States of America, A.I.D. Loan No. 388-T-0030 dated December 8, 1976, providing for assistance to the People's Republic of Bangladesh for Fertilizer Storage.

This is to confirm our understanding that the Government will use its best efforts to procure in the United States, during the disbursement period as set forth in Section 7.04 of the Loan Agreement, goods and services of a value equivalent to the amount of U.S. dollars disbursed to the Government pursuant to Section 7.01(b) of the Loan Agreement. It is our further understanding that the Government will provide A.I.D. with annual reports as to the value of goods and services procured in the United States with the first such report to be due twelve months after the date of the Loan Agreement. In computing the value of such goods and services, goods and services procured with funds provided by A.I.D. shall not be included.



If the above accurately reflects our mutual understanding, please so signify by signing at the indicated place below.

Sincerely yours,

[Signed]

DAVID M. WILSON  
Acting Director

Dr. Ekram Hossain  
Joint Secretary, Ministry of Planning  
Government of Bangladesh  
Dacca

[Signed]

EKRAM HOSSAIN  
Joint Secretary  
Ministry of Planning  
Government of Bangladesh  
December 8, 1976

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